

MEMORANDUM OF LAW

DATE: June 21, 1993

TO: Councilmember Juan Vargas

FROM: City Attorney

SUBJECT: Potential Conflict of Interest Arising from
Non-profit Agency's Receipt of CDBG Monies

This is in response to your opinion request of June 2, 1993, addressed to City Attorney John W. Witt. The facts were obtained in part from your memorandum, your representative Pat O'Mally, and the City Clerk's files.

BACKGROUND FACTS

Your wife has been asked to sit on the Board of Directors of Elderhelp, a not-for-profit agency. The position on Elderhelp's Board is not paid.

By Council Resolution No. R-282036, adopted on May 24, 1993, Elderhelp was recommended to receive two hundred thousand dollars (\$200,000) in Community Development Block Grant ("CDBG") monies. In addition, in April 1992, the City Council authorized a twenty (20) year lease with a 180 day termination clause with Elderhelp (Resolution No. R-279832).

QUESTION PRESENTED

If your wife accepts the position on the Board of Directors of Elderhelp, will you be prohibited from participating or voting on matters pertaining to Elderhelp?

LEGAL ANALYSIS

Because the City and Elderhelp have not only a grantor-grantee relationship, but also a contractual relationship, the conflict of interest issue you present must be analyzed both under the Political Reform Act (Gov't Code Section 81000) and Gov't Code Sections 1090 et seq.

In lieu of reciting the applicable law in this memorandum, I attach a copy of a Memorandum of Law prepared by Deputy City Attorney Rick Duvernay dated May 27, 1993, which treats questions similar to the one presented here.

Political Reform Act Analysis

Applying the Political Reform Act to the facts here, first it is important to be aware that economic interests of both a

public official and a public official's immediate family must be considered. Gov't Code Section 87103. "Immediate family" includes spouses. Gov't Code Section 82029.

Therefore, under the Political Reform Act, if there is a material financial effect on your wife's economic interest by virtue of her taking a position on Elderhelp's Board, that financial effect will be attributable to you as a public official, and it would potentially prohibit you from voting or participating on matters pertaining to Elderhelp.

As pointed out in the May 27 memorandum, management positions with "business entities" are considered economic interests for purposes of the Political Reform Act. However, the term "business entity" does not include not-for-profit agencies (Gov't Code Section 82025), such as Elderhelp. Since Elderhelp is not a "business entity," then a position on its Board of Directors would not be considered an economic interest under the Act and further analysis under the Act is not required. The mere fact that your spouse sits on the Board of Directors of Elderhelp would not preclude you from participating on voting on matters pertaining to Elderhelp.F

If, however, your wife were to be reimbursed by Elderhelp for travel, meals or meeting expenses in an amount equal to \$250 or more per 12 month period, Elderhelp would then be treated as a "source of income" to your wife (unless Elderhelp is a bonafide charitable institution). Gov't Code " 87103 and 82030.

If so, you may be precluded from participating in voting on matters pertaining to Elderhelp, if the particular matter before you would have a "material financial effect" on Elderhelp. There are no facts before us to analyze that question further. If your spouse accepts the invitation to sit on the Board and if she is reimbursed \$250 or more in a 12 month period, and if something comes before the Council pertaining to Elderhelp, then please ask us to analyze the issue at that time to give you a more definitive answer.

Government Code Section 1090 Analysis

As we stated above, since there is an ongoing contract between the City and Elderhelp, we must analyze the facts under Gov't Code Sections 1090 et seq.

Again, please refer to the attached Memorandum of Law of May 27 for an analysis of Gov't Code Section 1090 as it pertains to persons accepting unpaid board positions on nonprofit agencies. Although Elderhelp has invited your spouse, not you, to serve on its Board of Directors, in an abundance of caution we recommend that you disclose publicly and on the record your spouse's position with Elderhelp's Board of Directors' before you

participate in or vote on any matters pertaining to a current or future contract with Elderhelp (Gov't Code Section 1091.5(a)(7)).

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:011(x043.2)

Attachment

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